IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

SUIT NO. 2468 OF 1986

UCO Bank .. Plaintiffs.

vs.

M/s. Umesh Silk Mills

& Ors. .. Defendants.

Mr. Kedar Dighe with Vishal Khanvkar

for plaintiffs.

Mr. N. Vyas i/by Federal & Rashmikant

for Defendants.

CORAM : S.U.KAMDAR, J.

DATE : 12th July, 2005.

P.C.

. The present suit has been filed for recovery of the sum of Rs.2,20,454.84 along with interest at the rate of 17.5%. The plaintiffs have also claimed a further sum of Rs. 1,83,442.29 along with interest at the rate of 17.5% per annum on the principal amount of Rs. 1,77,238.95. Some of the material facts under which the present suit is filed are briefly enumerated as under :-

2. Sometime in or around 1977, the 1st

defendant was enjoying the cash credit facility and the bill discounting facility with the branch of the plaintiff bank situated at Santacruz. In or around May, 1977, the defendants requested that the facilities of the cash credit and the bill discounting be transferred from the Santacruz branch of the plaintiff bank to the Goregaon West branch of the plaintiff bank. In pursuance of the same the cash credit facility was given. Under the said cash credit facility, the plaintiffs advanced diverse amounts. On 2.6.1979, the defendant no. 1 executed a demand promissory note, letter of waiver, letter of continuity and letter of declaration. Defendant no. 1 also executed a deed of hypothecation, hypothecating the goods with the plaintiffs in respect of the said claim. In pursuance thereto certain amounts were advanced under the cash credit facility. The defendant no. 1 also availed of the bill purchase facility and executed a bill purchase agreement dated 2.8.1979 for the sum of Rs. 2 lacs and thereunder also he obtained diverse amounts. In or about June, 1982, the defendant requested for continuity of the said facility and accordingly, the 1st defendant executed a demand promissory note, letter of waiver and letter of continuity all dated 8.6.1982 and a balance confirmation dated 8.6.1982 confirming thereby the balance due being Rs. 2,09,671.11. A deed of hypothecation is also executed on 8.6.1982. The defendant no. 1

thereafter requested for enhancement of the facility and the said request was granted and the facility was enhanced. Since thereafter there were defaults on the part of the defendant no. 1 to make payment from time to time to the plaintiff as agreed upon, correspondence was exchanged by and between the parties for making payment of the aforesaid amount. The 1st defendant however admitted the liability but regretted to make payment on account of the serious financial problems faced by the 1st defendant. It is the case of the plaintiffs that between 28.3.1982 and 31.7.1984 the defendants from time to time paid diverse amounts to the plaintiffs towards principal amounts of 29 bills of exchange drawn by the 1st defendants on diverse parties and aggregate amount thereof was Rs. 1,77,238.95. The plaintiffs by their advocate's letter dated 14.6.1996 called upon the defendants to make the aforesaid payment. Thereafter there was also correspondence with the defendants. However, ultimately, no payment was forthcoming. Thus, the plaintiffs have filed the present suit for the recovery of their aforesaid amounts.

3. At the interim stage, the Receiver was appointed of the hypothecated materials and the goods and the Receiver has made a report dated 7.10.1986 wherein he confirmed that no goods are available for the purpose of sale which are covered

by the hypothecation agreement.

4. The defendants have filed their written statement on 30.11.1996 in which inter alia the defendants have admitted the claim of the plaintiffs. However, there is a dispute raised pertaining to the interest and claimed reduction in the liability due to various financial constraints faced by the 1st defendant. It has also been contended that the suit claim is barred by law of limitation. It has also been contended by the defendants that the plaintiffs have obtained from the defendants documents in blank and they are subsequently filled in the same. On the aforesaid contentions the defendants prayed that the suit be dismissed.

5. The learned counsel appearing for the plaintiffs has tendered the compilation of documents which is taken on record and marked Exhibit P-1 collectively. The learned counsel for the plaintiff has also tendered an affidavit of the plaintiff in lieu of examination in the form of evidence given by Shri Vilas Bhaurao Kulkarni being the Branch Manager and the Constituted Attorney of the plaintiff bank.

6. The said evidence has not been controverted as the defendants have expressed their inability to cross-examine the witness. The learned advocate

appearing for the defendants states that he has no instructions to proceed with the matter and he seeks to be discharged.

7. The matter was on Board on earlier occasions. The matter has been adjourned from time to time. In spite of the aforesaid adjournments, the defendants have not cared to contest the present suit. In view thereof, it is not possible for me to adjourn the matter any further.

8. In so far as the question of limitation is concerned, I find that there is no substance in the said contention because there are admittedly two letters dated 1.9.1983 and 22.5.1984 by which the defendants have acknowledged their liability to pay to the plaintiffs the outstanding amount as on that date. In my view considering the said acknowledgement of liabilities the present suit claim is within the period of limitation and thus the issue of limitation is answered against the defendants. In so far as the other issues are concerned, the affidavit of evidence is already taken on record. The defendants have not led any evidence to prove any of the issues including the issue pertaining to the fact that the documents were executed in blank.

9. In view of the aforesaid, I pass the following order.

> There shall be a decree against the defendants and in favour of the plaintiffs in terms of prayer clauses (a) and (c). Defendants to pay cost of the suit.